

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	All Saints' Episcopal School, Inc.)	
	District 1, Map 49, Control Map 49, Parcel 7.02,)	
	Special Interest 001)	
	<i>Claim of Exemption</i>)	Hamblen County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) concerning the effective date of exemption of the subject property from ad valorem taxation. The appellant, All Saints' Episcopal School, Inc. ("ASES"), filed an application for exemption of this property with the State Board of Equalization ("State Board") on July 31, 2006. By letter of May 14, 2007, State Board staff attorney Emily Bennett notified All Saints of the approval of its application, effective as of the filing (postmark) date. The ensuing appeal was hand-delivered to the State Board on August 12, 2007. The undersigned administrative judge conducted a hearing of this matter on November 14, 2007 in Morristown. ASES was represented by G. Michael Yopp, Esq., of Waller Lansden Dortch & Davis (Nashville). Hamblen County Assessor of Property Keith Ely appeared on his own behalf.

Findings of Fact and Conclusions of Law

All Saints' Episcopal School (the "School") was founded in 1967 as a private school for little children. Though affiliated with All Saints' Episcopal Church, Inc. (the "Church"), the School admits persons without regard to religious preference or race. The School currently offers pre-school and kindergarten programs as well as instruction for students in grades one through eight.

The School was originally housed in the Church's facilities at 601 West Main Street in downtown Morristown. In 1988, the Church filed an application for exemption of a newly-acquired "house and garage" at nearby 620 West Second North Street (the "Boxmoor" property). Based on the stated conversion of that property to a day elementary school, it was granted an "educational/religious" exemption by the State Board (effective July 18, 1988).

The property in question, located at 3275 Maple Valley Road in Morristown, is a six-acre portion of an approximately 41-acre tract that the Church purchased on April 22, 1998.¹ At that time, the entire tract was unimproved and classified as agricultural ("greenbelt") land under the Agricultural, Forest and Open Space Land Act of 1976, as amended (Tenn. Code Ann. sections

¹The subject property was annexed by the city of Morristown in 1999.

67-5-1001 *et seq.*). The Church successfully requested continuation of that favorable tax status in May, 1998.

On or about May 27, 1999, attorney L. Kirk Wyss submitted on the Church's behalf an application for exemption of the still-undeveloped land on Maple Valley Road. In his cover letter, Mr. Wyss described this property as the future site of the School. On appeal from the State Board designee's denial of that application, the undersigned administrative judge held that the property was not exemptible because the property was not yet "occupied and used" for the Church's exempt purposes within the meaning of the applicable law (Tenn. Code Ann. section 67-5-212). The attached decision, which was not appealed by the institution, concluded that:

The Church may, of course, reapply for exemption under Tenn. Code Ann. section 67-5-212(g) when construction of its new school begins on the subject parcel.

All Saints Episcopal Church (Hamblen County, Initial Decision and Order, December 17, 1999), p. 2.

By 2000, the School had grown to such an extent that it imposed a considerable burden on the Church committee then responsible for overseeing it. So on October 20 of that year, the Church and the School executed a "Memorandum of Understanding" whereby the Church granted "all governing rights and powers for the School to the School and its Board of Trustees." Exhibit C. This agreement also contemplated the transfer of the subject parcel (along with the Boxmoor property) to ASES for the erection of new School buildings on this site.²

ASES was duly incorporated in this state as a nonprofit "public benefit corporation" on December 18, 2000; and, three days later, the Church conveyed its interests in the subject parcel and the Boxmoor property to ASES. The new School complex on Maple Valley Road was substantially completed and occupied by ASES in 2002. On February 18, 2004, ASES sold the Boxmoor property – which had been returned to the tax roll when the School vacated it in 2002 – for \$135,000. Yet, inexplicably, it was not until tax year 2006 that the multi-million-dollar improvements (and underlying land) in question were added to the assessment roll as "commercial" property.³ Nor had ASES – apparently content to pay the modest greenbelt assessment on the land alone – theretofore applied for exemption of the subject property in its own right. As recounted by Interim School Head Clauston Jenkins in an attachment to the appeal form:

In early 2006, All Saints' received an assessment change notice from the County, but that notice was filed away by the Head of All Saints' and not discovered until after he left the school in June 2007.

²The School agreed to reserve a designated portion of the Maple Valley Road site for the future use of the Church.

³An employee of the State Division of Property Assessments actually discovered the new improvements in 2005, when Hamblen County underwent its last reappraisal.

Officials other than the Head of All Saints' first learned of the new, greatly higher appraised value when they received a past due statement from the County on July 25, 2006.⁴

At the hearing, Dr. Jenkins accentuated the close relationship that still exists between the School and the Church. Exhibits A—H. For example, ASES's charter recites that a majority of the members of the governing Board of Trustees must be members of the Episcopal Church (USA), and that "[t]his corporation acknowledges and accedes to constitutions, canons, doctrines, and disciplines of the Episcopal Church (USA) and the Diocese of East Tennessee." Amended and Restated Articles of Incorporation (Exhibit A), paragraphs 9 and 13. The Rector of the Church is an ex officio voting member of the Board, which appoints a "Religious Life Committee" (including the Rector, who also serves as Chaplain of the School) to ensure that the School maintains a "distinctly Episcopal identity." Bylaws (Exhibit B), Article II(F) and Article VI(D). And the School's Mission Statement (Exhibit D) reflects a commitment to provide "a quality education, academically and spiritually, in a Christian environment."

Article II, section 28 of the Tennessee Constitution provides (in relevant part) that "all property real, personal or mixed shall be subject to taxation, but the Legislature may except...such as may be held and used for purposes purely religious, charitable, scientific, literary or educational...." Under this authority, the General Assembly has declared that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists....

Tenn. Code Ann. section 67-5-212(a)(1)(A).

However, no property may be exempted from taxation under Tenn. Code Ann. section 67-5-212 unless an application for such exemption by the owning institution has been approved in writing by the State Board. Tenn. Code Ann. section 67-5-212(b)(1). Further, Tenn. Code Ann. section 67-5-212(b)(2) explicitly states that the exemption "shall not be transferable or assignable." Under the terms of Tenn. Code Ann. section 67-5-212(b)(3)(A), if an approved (or partially approved) application is filed after May 20 and more than 30 days after exempt use of the property in question began, "the exemption will be effective as of the date of application." But as amended in 2005, Tenn. Code Ann. section 67-5-212(b)(3)(B) now provides (in relevant part) that:

If a religious institution acquires property previously approved for a religious use exemption, **or property to replace its own property previously approved for a religious use exemption**, then the effective date of exemption shall be five (5) years prior to the date of application, or the date the acquiring institution began to use

⁴Presumably, the "statement" referred to by Dr. Jenkins was a real estate tax bill from the city of Morristown. County taxes are generally not due and payable until the first Monday in October of the tax year. Tenn. Code Ann. section 67-1-701.

the property for religious purposes, whichever is later. [Emphasis added.]

Relying on the language highlighted above, ASES claims exemption of the subject property as of January 1, 2006.⁵ Mr. Yopp characterized the School as an “integral part” and “ministry” of the Church.

As the party seeking to change the initial determination on its application for exemption, ASES has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

ASES has already been remarkably fortunate in avoiding what could – and, under the circumstances, *should* – have been much greater property tax liability than it presently faces. The State Board has no record of any application *by* ASES for exemption of the Boxmoor property; yet it was not assessed to ASES until July 1, 2002 (on a prorated basis). More importantly, although ASES did not apply for exemption of the subject property until about four years after the corporation had moved its School there, the multiple buildings on the premises escaped taxation for almost all of that period.⁶ Meanwhile, ASES enjoyed a seemingly dubious “greenbelt” assessment of the land on which those buildings were situated.

At least under the “relaxed” standard suggested in Kopsombut-Myint Buddhist Center v. State Board of Equalization, 728 S.W.2d 327, 332 (Tenn. Ct. App. 1986), the evidence of record does appear to establish sufficient Church involvement in the direction and day-to-day operation of the School to identify ASES as a religious (as well as educational) institution under Tenn. Code Ann. section 67-5-212. While the incorporation of ASES as a separate legal entity might suggest a breakaway of the School from the Episcopal Church, Dr. Jenkins’ testimony and the supporting documentation indicate otherwise. That the School welcomes children of other religious faiths, and refrains from proselytizing in a denominational sense, does not negate the partly religious character which ASES possesses. In a case involving a church-affiliated day care center, the Assessment Appeals Commission found that:

...[T]he church views the Center as a ministry to children and their parents rather than as an opportunity to propagate denominational views. The Center emphasizes basic Christian ideas rather than the finer points of Presbyterian doctrine, but the emphasis is nonetheless religious. We are aware there is a fine line between the “ministry” of a church and the service provided by a secular, nonprofit organization, but in this instance the proof indicates the church provides the service as a means of bringing the affected children under its religious influence, so that the day care provided may be considered as incidental to the church’s effort to further its religious mission.

⁵The appellant does not seek exemption for any period of time in which this property was classified as agricultural (greenbelt) land. Nevertheless, the resulting tax savings (for tax year 2006) would amount to over \$30,000.

⁶For whatever reason, no back assessment of these omitted improvements was made pursuant to Tenn. Code Ann. sections 67-1-1001 *et seq.* It is understood, of course, that ASES would probably have been motivated to apply for exemption sooner if the new construction had been “picked up” in a timely manner.

First Presbyterian Church (Bradley County, Final Decision and Order, November 19, 1991), p. 3.

Further, notwithstanding its far greater size (and value), the subject property may legitimately be considered a “replacement” for the School’s former Boxmoor location. As was mentioned in All Saints Episcopal Church, *supra*, the School simply needed more space to carry out essentially the same day school functions and activities. *Compare* Jesus People Church and Worship Center (Shelby County, Initial Decision and Order, July 30, 2007).

Respectfully, however, the administrative judge cannot construe the “replacement property” clause in Tenn. Code Ann. section 67-5-212(b)(3)(B) so broadly as to hold that the owner of the replacement property in question need not even be the institution whose application for exemption of the replaced property was “previously approved for religious use.” It is doubtful that the legislature intended to accord such preferential treatment to an institution which not only failed to meet the May 20 application “deadline” established in Tenn. Code Ann. section 67-5-212(b)(3)(A) after receiving an assessment change notice, but also never even initiated a claim of “religious” exemption of the property it formerly owned and occupied. See New Covenant Baptist Church (Knox County, Initial Decision and Order, December 28, 2007).

Order

It is, therefore, ORDERED that the initial determination of the State Board’s staff attorney be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of December, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Michael G. Yopp, Attorney, Waller, Lansden, Dortch & Davis
J. Keith Ely, Hamblen County, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In Re:	All Saints Episcopal Church District 5, Map 49, Control Map 49, Parcel 7.02 Exemption)))	Hamblen County
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INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from a denial of an application for exemption of the subject property from ad valorem taxation. The application was received by the State Board of Equalization (the "State Board") on June 2, 1999. By letter dated June 10, 1999, State Board Staff Attorney Sabrina Williams notified the applicant that the requested exemption had been denied.¹ All Saints Episcopal Church (the "Church"), the applicant and owner of the property in question, filed this appeal with the State Board on August 23, 1999. The administrative judge appointed under authority of Tenn. Code Ann. section 67-5-1505 conducted a hearing of this matter on November 17, 1999 in Greeneville, Tennessee. The Church was represented at the hearing by its Senior Warden, Morristown attorney L. Kirk Wyss. Hamblen County Assessor of Property James R. Hipshire appeared on his own behalf.

Findings of Fact and Conclusions of Law

The parcel in question encompasses approximately 41 acres on Maple Valley Road in Morristown. The Church, needing a more spacious site for the "day school" which it presently operates elsewhere in the city, acquired this tract in April of 1998.

As of the hearing date, the subject land had been graded and some drainage work had been done; but plans and specifications for the construction of the Church's relocated school had not been finalized. According to the headmaster's testimony, students, teachers, and parents visited the construction site in the spring of 1999 (for the launch of a fund-raising campaign); later in the fall (for the groundbreaking ceremony); and at several other times during the year (for field trips). Such activities have recently been constrained by the arrival of construction equipment on the premises.

The Church seeks exemption of the subject property on the basis of the facts recited above.

The Tennessee Constitution authorizes the legislature to exempt from taxation property which is "used for purposes purely religious, charitable, scientific, literary, or educational." Generally, in order to be eligible for exemption, property of a qualifying institution must actually be **occupied and used** by such institution for its exempt purposes. See Tenn. Code Ann. section 67-5-212(a)(1). An exception to this rule is embodied in the rather convoluted terms of Tenn. Code Ann. section 67-5-212(g). Essentially, subject to certain conditions and limitations, this subsection provides for exemption during the period of construction of a new **improvement**

¹The staff attorney opined that "[t]he exemption application filed on this property cannot be completed at this time since construction has not been completed." But see Tenn. Code Ann. section 67-5-212(g).

on land owned by an exempt institution.² Tenn. Code Ann. section 67-5-212(g) grants this privilege by deeming such an improvement to be "occupied and used" as of the date of commencement of construction.

However, as counsel for the Church conceded, Tenn. Code Ann. section 67-5-212(g) does not provide for exemption of the underlying **land** before substantial completion and occupancy of the new improvement. Thus this statute has no practical application until and unless: (a) a portion of the improvement has been completed; and (b) the partially completed improvement has been assessed. In the instant case, since neither of those contingencies has occurred, Tenn. Code Ann. section 67-5-212(g) is of no avail to the property owner.

The administrative judge must also respectfully reject the Church's appeal insofar as it rests on the occasional visits to the construction site by persons affiliated with the school. From the evidence of record, it does not appear that such visitation has ever become so regular and continuous as to constitute "occupancy and use" of any part of the subject land within the meaning of Tenn. Code Ann. section 67-5-212(a)(1). See Metropolitan Government of Nashville and Davidson County v. Holy Trinity Greek Orthodox Church (Davidson County Chancery Court, Part One, May 30, 1990). Moreover, by the time of the hearing, the visitation had largely ceased.

The Church may, of course, reapply for exemption under Tenn. Code Ann. section 67-5-212(g) when construction of its new school begins on the subject parcel.³

Order

It is, therefore, ORDERED that the subject property shall not be exempt from ad valorem taxation.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within thirty (30) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

²The assessment of an incomplete improvement is based on the fair market value of the construction materials used as of the annual (January 1) assessment date. Under Tenn. Code Ann. section 67-5-603(b)(5), the property owner is required to report the actual cost of those materials to the assessor by February 1.

³Mr. Wyss questioned whether a new application would be necessary in view of the filing of this appeal on the Church's behalf. But a successful appeal from an initial determination on an application for exemption cannot ordinarily be predicated on events occurring *after* the appeal was filed.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of December, 1999.


PETE LOESCH
ADMINISTRATIVE JUDGE

cc: All Saints Episcopal Church
L. Kirk Wyss, Esq.
Sabrina Williams, Staff Attorney, State Board of Equalization
James R. Hipshire, Assessor of Property

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